


Memorandum

To : Mr. Ramon J. Hirsig
Executive Director – MIC: 73

Date: July 30, 2004


From : Stephen R. Rudd, Acting Deputy Director
Sales and Use Tax Department – MIC: 43

Subject : Regulation 1825, *Aircraft Common Carriers*
Chief Counsel's Rulemaking Calendar – August 24, 2004

I am requesting your approval to place proposed amendments to Regulation 1825, *Aircraft Common Carriers*, on the Chief Counsel's Rulemaking Calendar for Board approval.

Revenue and Taxation Code sections 7261 and 7262 provide an exemption from the district transactions (sales) and use taxes on specified tangible personal property sold to and used by aircraft common carriers. In addition, Revenue and Taxation Code sections 7202(g) and 7203(e) provide an 80 percent exemption from the Bradley-Burns uniform local sales and use taxes on specified tangible personal property sold to and used by aircraft common carriers. Under the provisions of Assembly Bill 9 (ABX5 9), the 80 percent exemption from local tax is reduced to 75 percent, operative July 1, 2004, until the rate modifications in subdivision (a) of section 7203.1 cease to apply. These rate modifications reflect a decrease in the local tax rate from 1.25 percent to 1 percent. The provisions of ABX5 9 were approved as a result of the March 2, 2004 Primary Election.

While no changes were made to sections 7261 and 7262 as a result of ABX5 9, the changes to sections 7202(g) and 7203(e) and the new provisions of section 7203.1 necessitate revisions to the appendix of Regulation 1805 which reflect the decrease in the local tax exemption from 1 percent (80% x 1.25%) to 0.75 percent (75% x 1.0%). Since the appendix of Regulation 1825 is identical to the appendix of Regulation 1805, it must also be changed.

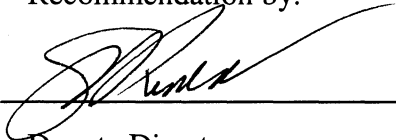
Attached are proposed amendments to the regulation and appendix.

We request your approval to place the matter on the Chief Counsel's Rulemaking Calendar on August 24, 2004, for Board authorization to amend the regulation in accordance with Title 1, California Code of Regulations, section 100. Legal Department staff has advised us that these changes are without regulatory effect and are not subject to the normal public hearing process.

If you have any questions regarding this request, please let me know or contact Ms. Mariflor Jimenez at (916) 324-2952.

Attachment

Recommendation by:



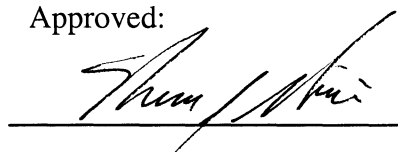
Deputy Director

Approved:



Timothy Boyer, Chief Counsel
Legal Department

Approved:



Ramon J. Hirsig, Executive Director

BOARD APPROVED

At the _____ Board Meeting

Deborah Pellegrini, Chief
Board Proceedings Division

Attachments

cc (all with attachments):
Mr. Timothy Boyer (MIC 83)
Ms. Deborah Pellegrini (MIC 81)
Ms. Janice Thurston (MIC 82)
Mr. John Waid (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Laureen Simpson (MIC 50)
Mr. Charles E. Arana Jr. (MIC 50)
Ms. Mariflor Jimenez (MIC 50)

Proposed Amendments to Regulation 1825, *Aircraft Common Carriers*

Regulation 1825. Aircraft Common Carriers.

(a) DEFINITION - "COMMON CARRIERS." As used herein, the term "common carriers" means persons who engage in the business of transporting persons or property for hire or compensation and who offer their services indiscriminately to the public or to some portion of the public.

(b) AIRCRAFT COMMON CARRIERS.

(1) State-administered district transactions (sales) tax does not apply to sales of tangible personal property to operators of aircraft to be used or consumed principally outside the county in which the sale is made if such property is to be used or consumed directly and exclusively in the use of such aircraft as common carriers of persons or property under the laws of this state, the United States, or any foreign government. Tax applies, however, to sales of fuel and petroleum products on and after July 29, 1991.

(2) State-administered district use tax does not apply to the storage, use, or other consumption of tangible personal property purchased by operators of aircraft when such property is used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government. Effective July 29, 1991, this exemption is not available for the storage, use, or other consumption of fuel and petroleum products. This exemption is in addition to that provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code.

(c) CONDITIONS OF EXEMPTION. The exemption for operators of aircraft common carriers applies only if the property is used directly and exclusively in the exempt activity. This exemption is limited to supplies and equipment (excluding fuel and petroleum products effective July 29, 1991) used or consumed directly in the carriage of persons or property. It does not include office or shop equipment or supplies or any other property not directly used or consumed in the carriage of persons or property.

(d) LEASES. If property is leased to an operator of an aircraft common carrier under a lease which is a continuing purchase, unless otherwise exempted, either the use tax or transactions (sales) tax applies to the gross receipts from the lease during such period of time that the property is in a taxing jurisdiction.

Reference: Sections 7261 and 7262, Revenue and Taxation Code.

Appendix

Form of Exemption Certificate for Claiming Exemption Under Regulations 1805 and 1825.

(a) **CERTIFICATE NECESSARY TO SUPPORT EXEMPTION.** All purchasers of tangible personal property claiming exemption from Bradley-Burns local taxes under the provisions of Regulation 1805 or from both Bradley-Burns local taxes and district transactions (sales) and use taxes under Regulation 1825 should file with the seller an exemption certificate in the form shown below. On and after July 1, 1972, for ~~county tax purposes of the~~ Bradley-Burns local taxes, this exemption is limited to 80 percent of the 1.25 percent local tax (i.e., 1%); and, on and after July 1, 2004, until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, this exemption is limited to 75 percent of the ~~county 1 percent local tax~~ (i.e., .75%).

(b) **FORM OF CERTIFICATE.**

AIRCRAFT COMMON CARRIER. The following certificate may be used by a purchaser claiming exemption under Regulation 1825 from district transactions (sales) and use taxes, and/or claiming partial exemption under Regulation 1805 from Bradley-Burns local taxes which: On or before June 30, 2004 is 1 percent; and, on and after July 1, 2004, until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, is .75 percent local tax and district transactions (sales) and use taxes under Regulations 1805 and 1825:

"The purchaser hereby certifies that the purchaser is the operator of aircraft as a common carrier of persons or property and that the property purchased will be used or consumed principally outside the county in which the sale is made and will be used or consumed directly and exclusively in the use of such aircraft as a common carrier of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of (check which is applicable)

- ☐ (1) the State of California
☐ (2) the United States
☐ (3) _____
(Insert the name of the foreign government)
(~~Check which is applicable~~)

"The purchaser agrees that if the property is used in some other manner or some other purpose, the purchaser will report and pay the tax measured by the purchase price of the property.

"This certificate is given to claim: ~~exemption from~~ (check which is applicable)

- ☐ (1) Partial exemption from Bradley-Burns local tax only which: On or before June 30, 2004 is 1 percent; and, on and after July 1, 2004, until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, is .75 percent local tax only
☐ (2) Exemption from district tax only
☐ (3) Both exemption from district tax and partial exemption from Bradley-Burns local tax which: On or before June 30, 2004 is 1 percent; and, on and after July 1, 2004, until the rate modifications in subdivision (a) of Revenue and Taxation Code section 7203.1 cease to apply, is .75 percent tax and district tax
(~~check which is applicable~~)

"Description of property to be purchased _____

Name of Seller _____

Purchaser _____

Address _____

Dated _____ "

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.